

Citation: *D. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 306

Appeal No. AD-13-99

BETWEEN:

D. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 6, 2015

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on June 18, 2013. The Board denied his appeal on the allocation of worker's compensation (WSIB) payments pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (Regulations) and the deduction of benefits under sections 19 and 54 of the *Employment Insurance Act* (Act). The Board unanimously dismissed his appeal.

[2] The Applicant received the Board's decision on June 25, 2013 and filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on July 18, 2013. The Application was filed within 30 days of the Applicant's receipt of the Board decision.

ISSUE

[3] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

SUBMISSIONS

[4] The Applicant submitted in support of the Application that:

- a) the appeal took 20 minutes;
- b) the Board's decision was made before his case was heard because the Board said that it could not change the legislature and must make a decision based on Regulations 35 and 36;
- c) he wants to know more about Regulations 35 and 36, concerning people receiving WSIB; and
- d) "I feel there is injustice in these laws, therefore I must appeal to a higher level."

LAW AND ANALYSIS

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) Act*, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[7] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[9] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] I will discuss each of the Applicant’s submissions in paragraph [4] above.

[11] Paragraph [4] a) alone is not a ground or reason for appeal. That the duration of the hearing was 20 minutes does not mean much by itself. Here, it may be related to paragraph [4] b), that the Board made a decision before hearing the case, giving as a reason that it cannot change the Regulations and must make a decision in accordance with them.

Combining these two reasons still does not amount to one of the allowable grounds of appeal.

[12] This leaves paragraphs [4] c) and d). The Board had considered and explained Regulations 35 and 36 as they relate to worker's compensation payments at page 3 of the decision. As for "injustice in the laws", the Applicant made this argument before the Board. In addition, the Applicant has not specified what the nature of the injustice is in specific terms or how it falls within the allowable grounds of appeal.

[13] The parties were invited to make additional submissions in writing on whether leave should be granted or refused. The Respondent advised that it would not be filing submissions. The Applicant referred to the Application and stated that he had reviewed Regulations 35 and 36 and does not agree with the Board ruling; in summary, the Applicant did not make any submissions that were additional to the information in the Application. As a result, I must decide on the Application based on the grounds and reasons given in the Application, the Board's decision and the record.

[14] I have read and carefully considered the Board's decision and the record. There is no suggestion by the Applicant that the Board failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[15] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success

CONCLUSION

[16] The Application is refused.

Shu-Tai Cheng

Member, Appeal Division